

FEB 22 2010

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JEREMY A. HUTCHERSON, )  
Petitioner, ) Civil Action No. 7:10-cv-00071  
)  
v. )  
)  
JAMES BERKLEY PRIEST, et al., )  
Respondents. ) MEMORANDUM OPINION  
)  
) By: Samuel G. Wilson  
) United States District Judge

Petitioner Jeremy A. Hutcherson, proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions in the Halifax County Circuit Court. In his petition, Hutcherson argues ineffective assistance of counsel and prosecutorial misconduct. The court finds that Hutcherson has failed to exhaust his state court remedies before filing this federal habeas petition and, therefore, dismisses his petition without prejudice.

I.

On November 13, 2009, after a trial, the Halifax County Circuit Court found Hutcherson guilty of burglary and violating a protective order. Hutcherson is currently awaiting sentencing on those convictions. Hutcherson concedes that he has not filed a direct appeal or pursued a state habeas petition in any state court.

II.

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code §8.01-654. In this case, it is clear from the face of his petition that Hutcherson has yet to pursue his claims in the Supreme

Court of Virginia. Accordingly, the court dismisses Hutcherson's instant habeas petition, without prejudice, as unexhausted.

III.

The Clerk is directed to send a certified copy of this Memorandum Opinion and accompanying Order to the petitioner.

ENTER: This 27<sup>th</sup> day of February, 2010.



United States District Judge